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Synthetic Fuels: Vital Despite Current Glut

Editor's Note: This article is particularly appropriate for this Report because it combines intelligence from various sources, including that of Soviet defectors with special scientific knowledge and *it also concerns national security. Synthetic fuels will never be produced in any country until such production is regarded as a national security necessity. Nazi Germany so recognized it, followed by South Africa and now the Soviet Union. When will the United States so look upon production of synthetic fuels from our over 90 percent in the ground fuel reserves of coal, oil shale and peat? Before the next oil crisis is upon us, it is to be hoped!*

Words of praise for Brezhnev come hard to a former chairman of the American Bar Association's Committee on Education About Communism, and even harder to the present editor of its *Intelligence Report.* I can't recall when we've said anything nice about him or the CPSU Central Committee, which set the Five-Year Plan tasks for General Secretary Brezhnev and now carried over to his successor, Yuri Andropov. I'm about to do so, nevertheless.

I have nothing but admiration for the Soviet Union's farsightedness in the development of synthetic fuel and, I regret to say, shock at our own wavering approach and shortsightedness.

A few facts first. The U.S.S.R. is the largest producer of petroleum in the world and is likely to remain so through the 1980s. Ditto for natural gas; if not now, certainly when the Urengoi and Sredne-Vilyui fields (in northwestern Siberia) come on full stream for the pipeline. At the moment, they are number two in gas production (narrowly behind the U.S.), but they have over one-third of the world's proven reserves.

Why, then, with all these riches should the U.S.S.R. be concerned about the production of synthetic fuels from gas and its large deposits of coal? Simply, because its leaders are not, as we are, possessed of what Daniel Yergin of Harvard calls "glut psychology." Our "oscillations in government policies and the public attitudes it engenders," says Yergin, "leads us from panic and hysteria to the complacency of the glut psychology." [Yergin and Hillebrand, Editors, *Global Insecurity—A Strategy for Energy and Economic Renewal,* Houghton Mifflin, New York, 1982, p. 15.] The Soviets, meanwhile, recognize that production of synthetic fuels is a *national security* issue, have set the course and are pursuing it without midstream corrections.

The course was *charted* when, at a plenary meeting of the CPSU Central Committee meeting in Moscow on Friday, February 20, 1981, "Guidelines for the Economic and Social Development of the U.S.S.R. for 1981-1985"

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Court Upholds CIA On Covert University Contacts

As previously noted, FOIA cases abound in the District of Columbia simply because it happens to be the seat of the federal government. One of the more significant decisions handed down recently had to do with FOIA requests for information on CIA covert contacts with academicians or students at American universities.

Intelligence Report, in its April 1982 issue, dealt with one such case, involving a request by a university student for information on covert contacts at Cornell University. More recently, Nathan Gardels, a student at UCLA, inquired of the CIA under FOIA as to the existence of records pertaining to covert contacts for foreign intelligence purposes between the CIA and individuals at UCLA.

During the course of the litigation certain CIA documents relating to overt activities were released but

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and for the period to 1990 were approved for presentation to the Twenty-sixth Congress of the Communist Party.

The course for development of synthetic fuels in the U.S.S.R. was *set* and put on automatic pilot when General Secretary Brezhnev plotted the coordinates to five thousand delegates on Monday, February 23, 1982. After stressing that "the task of improving the structure of the fuel and power balance is becoming more and more pressing" and that "the share of oil as a fuel must be reduced and it must be replaced with gas and coal," he went on to state the directive (*ustanovka*) of the Party Central Committee with respect to synthetic fuels:

> *Looking to the long term, there should be a thorough study of the question of production of synthetic fuel on the basis of the coal of the Kansk-Achinsk basin.* (Emphasis added.)

With the course thus prescribed, GOSPLAN (the chief planning agency in the U.S.S.R.), the State Committee for Science and Technology, the Academy of Sciences and other research institutes drafted a program for the production of fuels from Kansk-Achinsk coal in the 1981-85 period. Academician A. Sheindlin (well known to our scientists) was made chairman of the Coordinating Council on Synthetic Fuel. Since his appointment he has written extensively on both plans and progress. Thus in *Izvestiya* (April 24, 1981), after quoting Brezhnev's directive, he went on to say:

> The importance of the work in the program outline is obvious. Even though today our country is self-sufficient in oil and natural gas, the extraction of which will be even increased during the Eleventh Five-Year Plan, we are obliged, nevertheless, in the foreseeable future, to prepare technology for the period when the decreasing oil output must be supplemented by producing synfuels.

Since this first report by Academician Sheindlin, research and pilot experimentation have proceeded apace. Thus, Moscow radio reported on February 2, 1982:

> The technology has been developed for producing liquid fuel from the Kansk-Achinsk basin in Krasnoyarsk territory [in Siberia along the Enisey River]. The liquid fuel's quality is as good as conventional fuel oil and petrol. At the same time, valuable feedstock is obtained for many chemicals.

There has been no deviation from the course set by Brezhnev at the Twenty-sixth Party Congress. Scientific research organizations, design and planning institutes, and concerns and building trusts of twenty ministries and agencies are all working on the problem with a single-minded goal. As late as October 19, 1982, in a long article in *Izvestiya* entitled "Petrol from Gas and Coal," Academician G. Boreskov, director of the Institute of Catalysis in Novosibirsk (near the coal basin) reports:

> The engine fuel requirements of our country will grow in the coming years by tens of millions of tons... There are only limited possibilities to meet these requirements by way of producing more oil... Therefore, the radical solution to the problem of additional engine fuel supply must be based upon using non-oil raw materials; first in the coming decade, it must be natural gas, and afterwards coal... the production of liquid fuel from, say, cheap lignites of the Kansk-Achinsk colliery complex could compete with petrol refining from oil. Bearing in mind that the U.S.S.R. coal deposits are enormous, we can see the obvious viability of such a solution... the present task is to design and construct the high-volume equipment which allows production of synthesis gas at lower cost.

While a Soviet writer would never be permitted to refer to South Africa as a success story in the production of synthetic fuel (or anything else), that country *has* designed and constructed three such plants (built by an American contractor, the Fluor Corporation), and by the end of 1985 will be providing near 50 percent of its liquid fuel needs directly at the coal mine site. I have visited all three SASOL plants, and they represent a fantastic technological achievement. The Soviets cannot profit from this (except through industrial espionage), because they are *personna non grata* in South Africa. And, unfortunately, the U.S. has failed to profit to the extent we might because of the internal problems of that troubled country. (Perhaps this will be alleviated by the Reagan policy of "constructive engagement" with that country.)

Three presidents—Nixon, Ford and Carter—have announced ambitious plans for the development of energy independence, in part through production of synthetic fuels. Nixon in 1973 announced a goal of energy independence by 1980. "Let us set our national goal," he said, "in the spirit of Apollo, with the determination of the Manhattan project, that by the end of this decade we will have developed the potential to meet our energy needs without dependence on any foreign energy sources." Watergate intervened, and the spirit of Apollo faltered until 1975, when Ford called for the building of 20 major synthetic fuel plants. We lurched from crisis to off-the-shelf complacency until the gas lines of the second oil shock of June 1979.

With the advent of the gas lines there was clamor by the public and the Congress for action. Carter offered a

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Federal Tort Claims Act Reintroduced in Both Houses

In the previous session of Congress, a bill amending the Federal Tort Claims Act was introduced by Congressman Sam B. Hall (D-Tex.), chairman of the Subcommittee on Administrative Law and Governmental Relations. With minor amendments, it was reported favorably to the House. No action took place, however, because time was running out on both sides of Capitol Hill.

When the House reconvened in early January, Congressman Hall reintroduced his legislation to amend the Federal Tort Claims Act (H.R. 595). The purpose of the bill is stated in these words:

> *To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of U.S. employees, to provide remedy against the United States with respect to constitutional torts, and for other purposes.*

The language of H.R. 595 is identical to the language of the bill introduced by Congressman Hall in the 97th Congress.

As of March 1, no hearing has yet been scheduled. There is, however, sufficient support for the bill in the 98th Congress to justify optimistic assessment of the possibility of enacting it in the current session.

Senator Charles E. Grassley (R-Iowa), chairman of the Subcommittee on Agency Administration, who had introduced parallel legislation in the 97th Congress, reintroduced his version of the amendment to the Federal Tort Claims Act on March 1 and the bill was assigned the number S. 633.

In October 1982, the Society of Former Special Agents of the FBI adopted a position paper supporting the proposed amendments to the Federal Tort Claims Act. The statement, which was circulated over the signature of President Lee O. Teague, said the following in appealing to Congress to act quickly:

> Since 1971, thousands of government employees have been taken to court and there are presently pending cases involving some 10,000 public servants. In December 1981 one present and four former FBI agents were held liable for $262,500 for alleged violations of First Amendment rights relating to FBI counterintelligence programs initiated in the late 60s and 70s. This, plus some $500,000 in attorney fees being claimed by the prosecution, could cause financial ruin for the five individuals....
>
> There are bills pending in both houses of Congress which would make the government, not the employee, the defendant in Bivens type cases. The Justice Department has indicated that of the thousands of suits filed since 1971, a large percentage seem to be of a personally vindictive nature. Removing the employee as a defendant will destroy the motive for filing vindictive suits. The bills pending do not remove a citizen's legal recourse if wronged by the government, but simply substitute the government as defendant.

The effort to amend the Federal Tort Claims Act has also been strongly supported by the Administrative Conference of the United States. In a statement adopted on December 16, 1982, the Conference said:

> 1. Congress should enact legislation providing that the United States shall be substituted as the exclusive party defendant in all actions for damages for violations of rights secured by the Constitution of the United States committed by federal executive branch officers and employees while acting within the scope of their office or employment. The legislation should provide adequate procedures to ensure that, where a damage action for violation of such rights is brought against an executive branch officer or employee, such action should be deemed to have been brought against the United States upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the suit arose. The Attorney General's failure to make such certification should be judicially reviewable.
>
> 2. Such legislation should provide that, in actions alleging constitutional violations, the United States may assert as a defense any qualified immunity or good faith defense available to the executive branch officer or employee whose conduct gave rise to the claim, or his reasonable good faith belief in the lawfulness of his conduct. The United States should also be free to assert such other defenses as may be available, including the absolute immunity of those officers entitled to such immunity.
>
> 3. The agency that employed the offending official should be responsible for investigation and, where appropriate, for disciplining the official and implementing any other appropriate corrective measures. The Office of Personnel Management should assure, via guidance promulgated through the Federal Personnel Manual and other devices, that agencies are authorized to employ existing mechanisms to impose sanctions on officers and employees who have violated the constitutional rights of any person. Employees should be permitted to assert as a defense in any disciplinary proceeding their good faith in taking the action in question, as well as such other

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defenses as may be available.

4. Congressional legislation should preserve the opportunity for jury trial only with respect to claims that arose prior to the effective date of the legislation implementing this recommendation.

During the final months of 1982, the Association of Former Intelligence Officers also adopted a resolution supporting amendments to the Federal Tort Claims Act. The text of this resolution follows.

> WHEREAS the Federal Tort Claims Act, since the 1971 Supreme Court decision in *Bivens vs. Six Unknown Narcotics Agents*, now makes government employees personally liable instead of the government for actions taken in good faith within the scope of their authority and duty; and
>
> WHEREAS since 1971 over 2200 "Bivens" lawsuits, many with multiple defendants totaling 7,500-10,000 employees, have been filed, and only 13 have resulted in money judgments; and
>
> WHEREAS in publicly supporting proposed amendments in H.R. 7034 the Department of Justice has declared the majority of these suits to be trivial and vindictive; and
>
> WHEREAS the current legislation has a chilling and stifling effect on employees of the Congress, regulatory agencies, investigative agencies and other Government bodies under its provisions; and
>
> WHEREAS the proposed legislative amendments would curb harassing actions, increase legitimate plaintiffs' recoveries by encouraging settlements by the Government, and reduce the Government's litigation costs;
>
> NOW THEREFORE BE IT RESOLVED that the Association of Former Intelligence Officers in convention assembled on October 2, 1982, urges the Congress to pass H.R. 7034 which will make the Federal Government the sole party defendant instead of the individual employee in such suits.

Secrecy of NSA Intercepts Upheld by Court

In a District of Columbia Circuit Court of Appeals case decided in September (*Salisbury v. United States of America*, D.C. Cir., Slip Opinion No. 81-1657, September 21, 1982), Harrison E. Salisbury, a correspondent and editor with the *New York Times*, sought release under FOIA of records of the National Security Agency (NSA) pertaining to himself. He had earlier learned through FOIA requests that the CIA and the FBI had information on him in their files which had been provided to them by NSA.

The NSA filed an affidavit stating that, as a part of its mission, it monitors foreign communications channels, and "picks up all communications carried over that link." The district and appeals court denied Salisbury's request. The latter court's decision stated, in part:

> The NSA claims that the disputed records are exempt from mandatory disclosure under FOIA pursuant to exemption 1, 5 U.S.C. § 552 (b) (1) (1976), which applies to matters that are
>
> (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.
>
> The agency designates as applicable Executive Order No. 12065, 3 C.F.R. 190 (1979)....
>
> We turn first to the contention that contradictory evidence pervades the record. In particular, appellant takes issue with the agency's assertions that little authoritative information exists in the public domain concerning its surveillance activities, and that revealing the fact of interception would jeopardize the national security. With regard to the former, appellant points to another case, *Jabara v. Kelley,* 476 F. Supp. 561 (E.D. Mich. 1979), *appeal docketed*, No. 80-1391 (6th Cir.), in which the agency disclosed that it had intercepted the messages of the plaintiff in that case, and to the admission of the Director of the NSA before Congress that the agency had at times monitored communications between Hanoi and the United States. In addition, both a Senate report and an opinion of this court discuss to some extent the monitoring practices of the NSA. *See* S. Rep. No. 755, *Supra,* at 735-83; *Halkin v. Helms,* 598 F.2d 1, 4 (D.C. Cir. 1978). Thus, appellant argues, the agency has already released a large amount of information and should be made to indicate in detail why the increment sought in the instant case would be harmful. With regard to the second point, Salisbury contends that he has sent so many communications, including some between Hanoi and the United States, in so many different ways, that it would be impossible to infer much from the bare fact that his communications had at times been intercepted.
>
> We are persuaded, as was the District Court, that this evidence is not contradictory and does not undermine the agency's affidavits. The fact of disclosure of a similar type of information in a different case does not mean that the agency must make its disclosure in every case. As this

court stated in *Halkin v. Helms*, 598 F.2d 1 (D.C. Cir. 1978):

> The government is not estopped from concluding in one case that disclosure is permissible while in another case it is not. As we have said, the identity of particular individuals whose communications have been acquired can be useful information to a sophisticated intelligence analyst. We see nothing inconsistent with the Secretary's assertion of the privilege here and the disclosure that occurred in the *Jabara* case.

Id. at 9. Likewise, the agency's admission that at one time it had monitored communications transmitted between the United States and Hanoi does not reveal, as might the information sought in this case, the particular channels monitored. And bare discussions by this court and the Congress of NSA's methods generally cannot be equated with disclosure by the agency itself of its methods of information gathering. *See Military Audit Project v. Casey,* 656 F.2d 724, 752-53 (D.C. Cir. 1981); *Phillippi v. CIA,* 655 F.2d 1325, 1332-33 (D.C. Cir. 1981). In any event, owing to the "mosaic-like nature of intelligence gathering," Appellee's Br. at 18, and to our desire to avoid discouraging the agency from disclosing such information about its intelligence function as it feels it can without endangering its performance of that function, we will not hold in this case that such limited disclosures as have been made require the agency to make the disclosure sought here.

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the CIA refused to confirm or deny the existence of any such covert documents. The district court granted summary judgment for the CIA (*Gardels v. Central Intelligence Agency,* 484 F. Supp. 368 (D.D.C. 1980)) but was reversed and remanded on appeal (637 F. 2d 770 (D.C. Cir. 1980)) because, in the judgment of the appeals court, the CIA had filed an inadequate statement of facts. Thereafter, the CIA filed a new statement and again received a favorable judgment in the district court (510 F. Supp. 1977 (D.D.C. 1981)). The appeals court has now upheld the lower court (D.C. Cir. Slip Opinion No. 81-1567, September 28, 1982). That decision provides pertinently:

> We need not spell out the CIA's need for these covert contacts because plaintiff-appellant does not really contest that part of the case. Suffice it that the CIA collects confidential information and advice from academics who have travelled abroad, studied a discipline pertinent to foreign intelligence, or can help in recruiting foreign intelligence sources; the Agency also has contracts for scientific research and development as well as for social science research related to foreign policy, and has private consultations between scholars and CIA research analysts. As one CIA affidavit puts it: "To perform our job properly we need the assistance, criticism, and perspective of the best professional talents available in the private sector."

The nub of this case is whether the CIA can say whether or not it has had such covert contacts at California without undermining the confidentiality of its intellgience sources, as well as those obtained through its hidden contacts. On that, the government affidavits and depositions stress that either answer would compromise sources and methods.

To admit that the CIA had such contact at this University would allow foreign intelligence agencies to "try to zero in and identify specifically what were the nature of those relationships or with whom the relationships were." Blake Dep. at 66, Joint App. at 130. The foreign intelligence entity could and probably would examine and take measures against those of its citizens who had studied at the university, could and would prevent its nationals from attending the university, and could and would curtail access and availability to academics from California (and other American schools) travelling abroad or seeking contact with foreign sources. To help it take countermeasures and to discover what the CIA is up to, the foreign intelligence organization can piece together information regarding the University and then target certain individuals or sectors of that university's life (including covert research work for the CIA)—once the Agency concedes that it has had covert contact there. In addition, other persons at the university may reveal, inadvertently or deliberately, academics they have reason to think are covert CIA contacts. All this is explained in detail in the CIA's affidavits and depositions.

On the other hand, the Agency has also articulated the dangers inherent in its denying that it had had any covert contacts with the University of California. The CIA has received more than 125 similar FOIA requests for information on covert contacts with American colleges and universities—covering about 100 different schools. If the Agency were required to indicate those schools with which it had had no covert contact, the work of foreign intelligence bodies

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would obviously be much easier; they could and would concentrate their efforts on the remaining American colleges and universities, and their sphere of activity could be appreciably narrowed....

We hold, under that standard and our decisions, that the Agency has met the burden of showing that it acted permissibly in its judgment that to reveal or acknowledge covert contacts with the University might very well disclose some sources or methods of foreign intelligence (or both)—and that the Agency's judgment must be accepted. The CIA position, detailed in affidavits and depositions, is specific and fleshed out as much as it can be done publicly, and is far from being merely conclusory; as a whole it appears "logical" and "plausible" in protecting our intelligence sources and methods from foreign discovery. In one word, it makes good sense. *See Halperin v. Central Intelligence Agency, supra,* 629 F.2d at 148; *Hayden v. National Security Agency,* 608 F.2d 1381, 1387-1388 (D.C. Cir. 1979), *cert. denied,* 446 U.S. 937 (1980)....

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quick technological fix to appease the frustration and anger of the American people: a very large-scale fuels plan. Congress in its wisdom proceeded to scale back the Carter plan and in 1980 passed the Energy Security Act, which created the Synthetic Fuels Corporation. The Act authorizes the corporation to award financial assistance to synthetic fuels projects and set national synthetic production goals of 500,000 barrels of oil equivalent per day by 1987, increasing to two million barrels per day by 1992.

Authorization and implementation, however, are different animals. So far, through no fault of the dedicated personnel at the Synthetic Fuels Corporation (many of whom gave up high-paying jobs to try to carry out the Act's express goals), there have been few private industry takers. Now the directors and officers of the corporation are being verbally beaten and bedeviled by some members of the same Congress that passed the legislation in 1980. They are calling the corporation and the whole synthetic fuels effort a "boondoggle," and some of them have even written letters to President Reagan calling for the corporation's abolishment.

If one were to plot on a chart the course of our own synthetic fuels effort from 1973 to date, one would immediately suspect a drunken navigator and call for his court martial or assignment to other duties, such as damage control. The synthetic fuels ship has sailed from shoal to shoal and is now leaking so badly some of its crew have taken to the lifeboats, and the oarsmen seem to be pulling in opposite directions.

The fact that there is at the moment a glut on the world oil market in no way diminishes the urgency of the situation. There could be another oil crisis tomorrow. All it would take would be a well-placed assassin's bullet or an advance by Khomeini (or the U.S.S.R.) into the Gulf States to take over the Middle East oil supplies. If we were ever thus deprived of access to our major sources of foreign oil, we might find ourselves in dire straits. We have a breathing spell now. Let's take advantage of it to prepare to meet any such contingency.

Development of the synthetic fuels option is a matter that vitally affects our national security. We can only hope, for the sake of that national security, that the present captain of the ship (President Reagan) will get everyone back aboard and set as steady a course for the future as the Soviets have—and stick to it!